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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-190584

DATE: November 22, 1977

MATTER OF: Jets Services Inc.

DIGEST:

1. Protest of agency's decision to terminate contract for convenience of Government based upon agency's belief that cost savings will result from performing services in-house is dismissed since decision to terminate contract is matter of contract administration not generally reviewable by GAU under its Bid Protest Procedures and since contract termination to obtain cost savings available elsewhere is proper exercise of contracting officer discretion.
2. Protest that agency's decision that it can perform services in-house at less cost is erroneous is not for consideration since decision is governed by OMB Circular A-76, compliance with which is policy matter for Executive branch.

Jets Services Inc. (Jets) protests the termination of contract No. DAJA37-77-C-0283 issued by the United States Air Force.

The contract, awarded in June 1977, called for mess attendant services at Rhein-Main Air Base, Frankfurt, Germany. After award it was decided by the Air Force that a cost savings would result from performing the services in-house. Consequently, the contract was terminated for the convenience of the Government. Jets protests that termination, stating that the termination action is a "gross violation" of the Termination for the Convenience of the Government contract clause and disputing the Air Force's assertion that a cost savings will result.

The determination of whether a contract should be terminated for the convenience of the Government is a matter of contract administration and generally is not for review by the General Accounting Office under our Bid Protest Procedures,

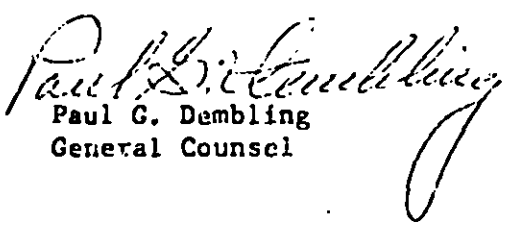
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4 C.F.R. Part 20 (1977). However, where it is alleged that a termination for convenience resulted from bad faith or from a clear abuse of agency discretion, we consider the matter because a "bad faith" termination constitutes a breach of contract and therefore entitles the contractor to breach of contract damages instead of the termination settlement provided for by the contract. National Factors, Inc., et al. v. United States, 492 F. 2d 98 (Ct. Cl. 1974).

Although Jets alleges that the termination action is in "gross violation" of the Termination for Convenience of the Government clause, it does not request breach of contract damages, but rather requests that the terminated contract be reinstated. Moreover, we could not conclude that the termination constitutes a breach of contract since it has been held that a good faith termination of a contract to perform the work in-house is a valid exercise of the contracting officer's discretion. Kaufman DeDell Printing, Inc.-Reconsideration, B-188054, October 25, 1977, 77-2 CPD, citing Colonial Metals Co. v. United States, 495 F. 2d 1355 (Ct. Cl. 1974), and Jets Services, ASBCA 19841, 76-1 BCA 11,619.

With regard to Jets' belief that a cost savings will not result from in-house performance, it appears that Jets is concerned with how the Air Force computed its in-house costs. This is a matter governed by Office of Management and Budget Circular A-76, which provides policy guidance for the Executive branch. An agency's failure to comply with the Circular does not render the agency's action illegal and is not a matter considered by this Office under the Bid Protest Procedures. Kaufman DeDell Printing, Inc.-Reconsideration, supra.

Accordingly, the protest is dismissed.


Paul G. Dembling
General Counsel